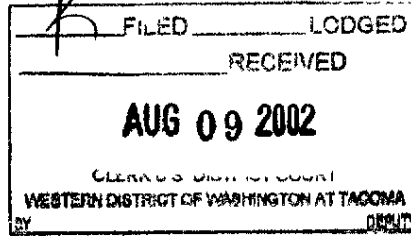


ORIGINAL



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ASARCO, INC. and SOUTHERN
PERU HOLDINGS CORPORATION,

Defendants.

C02 - 5401 FDB

Civil Action No. _____

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, files this complaint and alleges as follows

NATURE OF THE ACTION

1 This is a civil action for declaratory judgment brought by the United States pursuant to 28 U S C § 2201 seeking a declaration regarding the rights and obligations of the parties under Section 3304 of the Federal Debt Collection Procedures Act of 1990 ("FDCPA"), 28 U S C § 3304, and the Federal Priorities Statute ("FPS"), 31 U S C § 3713, and seeking appropriate injunctive relief



1

No Summons
No \$ - USA

JURISDICTION AND VENUE

2 This Court has jurisdiction over the subject matter of this action under 28 U S C §§ 1331, 1345, 2201, 3004, and 3306

3 This Court has personal jurisdiction over the Defendants pursuant to 28 U S C § 3004(b)

4 Venue is proper in the Western District of Washington pursuant to 28 U S C §§ 1391(b) and 3004(b)

5 An actual controversy exists between the parties with regard to the respective rights and obligations of Plaintiff United States of America ("United States") and Defendants ASARCO, Inc ("ASARCO") and Southern Peru Holdings Corporation ("SPHC") under the FDCPA and the FPS in connection with the imminent sale by ASARCO and SPHC of their most valuable asset, their ownership interest in the Southern Peru Copper Corp ("SPCC")

DEFENDANTS

6 ASARCO is incorporated in the State of Delaware and maintains its principal place of business at 2575 E Camelback Rd , Phoenix, Arizona

7 SPHC is incorporated in the State of Delaware and maintains its principal place of business at 2575 E Camelback Rd , Phoenix, Arizona SPHC is a holding company and is a wholly owned subsidiary of ASARCO

8 ASARCO is a wholly owned subsidiary of Americas Mining Corporation ("AMC"), which is incorporated in the State of Delaware AMC is a wholly owned subsidiary of Grupo Mexico S A de C V ("Grupo Mexico"), a Mexican corporation

GENERAL ALLEGATIONS

9 Prior to 1999, ASARCO owned approximately 54% of the outstanding common stock of SPCC, a publicly traded company ("the Stock")

1 10. In November of 1999, ASARCO was purchased by Grupo Mexico in a highly
2 leveraged buy-out ("the LBO") Since the LBO, substantial operational, organizational and
3 financial changes have occurred within ASARCO

4 11 In November of 1999, SPHC was created as a wholly owned subsidiary of
5 ASARCO, capitalized by the Stock held by ASARCO

6 12 The LBO was financed in part by a \$817 million term loan to ASARCO, which
7 was guaranteed by Grupo Mexico, and in part by cash Grupo Mexico also assumed \$1.2 billion
8 in ASARCO debt at the time of the acquisition

9 13 To retire some of the LBO debt, two of ASARCO's most significant non-copper
10 mining assets were sold ASARCO's specialty chemical and aggregate divisions

11 14 ASARCO still carries significant debt A substantial portion of this debt consists
12 of \$450 million owed to a group of financial lending institutions ("the Banks") under a
13 revolving line of credit, which debt is secured by the Stock and is guaranteed by Grupo
14 Mexico

15 15 Some time following the LBO, Grupo Mexico created AMC and transferred into
16 AMC Grupo Mexico's stock holding interest in ASARCO and Grupo Mexico's stock holding
17 interest in another subsidiary Grupo Minera Mexico S A de C V ("GMM") GMM is a
18 company incorporated under the laws of Mexico and is the owner of the mining interests of
19 Grupo Mexico within Mexico

20 16 ASARCO has informed the United States that the Defendants intend to enter
21 into a transaction wherein the Stock is to be transferred to AMC in the immediate future (the
22 "Transfer")

23 17 ASARCO has presented to the United States the terms of the Transfer and has
24 described the consideration to be received for the Transfer ("the Consideration")

25 18 As part of the Consideration, AMC intends to arrange for the forgiveness of an
26 indebtedness owed by ASARCO to Compañía Mexicana de Cobre, S A ("Mexicana de Cobre")
27

Forgiveness"), although ASARCO has characterized this indebtedness as a downpayment for the Transfer Compañía Mexicana de Cobre is a wholly owned subsidiary of GMM

19 The Defendants have made no effort to market their interest in SPCC to any unrelated outside party.

20 ASARCO is unable to pay, and is generally not paying, its debts as they come due, and its liabilities exceed the value of its assets

21 ASARCO has extensive environmental liabilities to the United States These include, but are not limited to, environmental clean-up and/or payment obligations under the following civil judgments *United States v ASARCO* (W D Wash), Civil Action No C91-5528 B, *United States and State of Idaho v ASARCO, et al* (D Idaho), Civil Action No 94-206-N-EJL, *United States and State of Texas v Encycle/Texas and ASARCO* (S D Texas), Civil Action H-99-1136, *United States v ASARCO* (D Mont), CV 98-3-H-CCL, *United States v ASARCO* (D Mont), CV-90-46-H-CCL, *United States v ASARCO* (D Colo), Civil Action Nos CV-83-C-2388 and 86-C-1675, *United States v ASARCO* (D Utah), Civil Action No 2 98CV-0415B, and *United States v ASARCO, et al* (D Kansas), Civil Action No 99-1399

22 ASARCO also has environmental liabilities to the United States under EPA administrative orders on consent, including but not limited to the following *In the Matter of Circle Smelting, Beckemeyer, IL*, EPA Docket No V-W-97-C-419, *E Helena Lead Education and Abatement Program*, EPA Docket No CERCLA-VIII-91-17, June 20, 1996, *In the Matter of RI/FS, Vasquez Blvd /Interstate 70 (Denver, CO)*, CERCLA-08-2001-13, September 25, 2001, *In the Matter of Jasper County/Tri-State Mining Area Site*, 91-F-0020, August 2, 1991, *In the Matter of Newton County Mine Tailings Site*, VII-96-F-0022, June 17, 1997, *In the Matter of Federal Mine Tailings Site*, VII-97-F-0009, September 30, 1997, and *In the Matter of Big River/St Francois County Mining Area Site*, VII-97-F-0002, January 29, 1997

23 ASARCO also has environmental liabilities under EPA unilateral administrative orders, including but not limited to the following *ASARCO Sediments/Groundwater Operable*

U S DEPARTMENT OF JUSTICE
Environmental Enforcement Sec
P O Box 7611
Washington, D C 20044-7611
(202) 514-3644

Unit UAO, Tacoma/Commencement Bay Site, WA , CERCLA-VIII-96-19, OUI Order, E
Helena Site, MT , CERCLA VIII-89-20, Site Investigation Order, E Helena Site, MT ,
CERCLA VIII-91-19; In the Matter of Newton County Mine Tailings Site, 07-2002-0114,
April 15, 2002, In the Matter of Omaha Lead Site, CERCLA-7-99-F-0029, August 24, 1999

24 ASARCO is a defendant in an ongoing civil action *United States v ASARCO, et al* (D Idaho), Civil Action Nos 96-0122-N-EJL/91-0342-N-EJL (Consolidated Cases),
concerning its liability at the Bunker Hill facility in the Coeur d'Alene River Basin in Idaho

25 ASARCO is a defendant in another recently filed environmental enforcement
action, *United States v ARCO, et al* (D Montana), Civil Action No 02-35-Bu-RFC,
concerning its liability at the Butte Mine/Silver Bow Creek site, in which a consent decree has
been lodged but not yet entered

26 Although not yet subject to formal proceedings, ASARCO is liable under
Section 106 and/or 107 of CERCLA, 42 U S C §§ 9606, 9607, for response actions and
repayment of response costs incurred or to be incurred at a number of additional sites, including
but not limited to the Richardson Flat site, Park City, UT, the El Paso Smelter site, El Paso,
TX, and the Omaha Smelter site, Omaha, NE

27 ASARCO has informed the United States that it is unable to meet its
environmental responsibilities and reimbursement obligations established under the existing
civil judgments to which it is a party-defendant, including but not limited to those described in
Paragraph 21 of this Complaint and is presently in violation of some of those judgments

28 In addition to its post-judgment liabilities, ASARCO has informed the United
States that it is unable to meet its environmental responsibilities and reimbursement obligations
established under the schedules of existing administrative orders on consent and unilateral
administrative orders in which it is a named respondent, including but not limited to those
described in Paragraphs 22 and 23 of this Complaint

29 ASARCO is actively engaged in the process of liquidating its saleable, non-core
assets

30 SPHC was created by ASARCO at the time of the LBO for the purpose of
defrauding the unsecured creditors of ASARCO, including the United States, by attempting to
insulate the Stock from the claims of such creditors

31 ASARCO dominates and controls SPHC through its ownership of all of SPHC's
stock and the identity or overlap of ASARCO's and SPHC's officers and directors

32 Upon information and belief, SPHC conducts no other business than that of
owning the Stock, has no employees, has no creditors, and has no assets other than the Stock

33 As a result of the Banks' secured lien encumbering the Stock, SPHC is grossly
undercapitalized

34 SPHC has failed to respect corporate formalities, including but not limited to the
filing of annual reports, the holding of annual meetings and the taking of minutes, and the
appointment of corporate officers

35 The Transfer will benefit Grupo Mexico, AMC, and other persons known or
unknown, to the detriment of ASARCO's unsecured creditors, including the United States

36 SPHC is a mere instrumentality and alter ego of ASARCO and its corporate
identity must be disregarded to prevent fraud or injustice to the United States and the other
creditors of ASARCO

FIRST CLAIM FOR RELIEF
(Section 3304(a)(1) of the FDCPA)

37 Paragraphs 1 through 36 are realleged and incorporated by reference

38 ASARCO is a "debtor" to the United States within the meaning of Section
3002(4) of the FDCPA, 28 U S C § 3002(4)

39 The Transfer is a "transfer" within the meaning of Section 3301(6) of the
FDCPA, 28 U S C § 3301(6)

40 The liabilities of ASARCO described in Paragraphs 21 through 26 of this
Complaint are "debts" to the United States ("the Debts"), within the meaning of Section
3002(3)(B) of the FDCPA, 28 U S C § 3002(3)(B), which arose before the Transfer was made

41 The sum of ASARCO's debts is presently greater than all of its assets at a fair
valuation, or will become greater than all of its assets at a fair valuation as a result of the
Transfer

42 ASARCO is generally not paying its debts as they become due

43 ASARCO is either presently insolvent or will be rendered insolvent as a result of
the Transfer, within the meaning of "insolvency" as defined in Section 3302 of the FDCPA, 28
U S C § 3302

44 The sum of the Defendants' collective debts is presently greater than all of their
collective assets at a fair valuation, or will become greater than all of their collective assets at a
fair valuation as a result of the Transfer

45 The Defendants are collectively either presently insolvent or will be rendered
insolvent as a result of the Transfer, within the meaning of "insolvency" as defined in Section
3302 of the FDCPA, 28 U S C § 3302

46 The Defendants will not receive a reasonably equivalent value in exchange for
the Transfer

47 The United States is entitled to a judgment declaring that the Transfer is
fraudulent as to the Debts, pursuant to Section 3304(a)(1) of the FDCPA, 28 U S C §
3304(a)(1), and to appropriate equitable and legal relief related thereto

SECOND CLAIM FOR RELIEF
(Section 3304(b)(1)(B)(ii) of the FDCPA)

48 Paragraphs 1 through 46 are realleged and incorporated by reference

49 ASARCO intends to incur, or believes or reasonably should believe that it will
incur, debts beyond its ability to pay as they become due, as a result of the Transfer

50 The United States is entitled to a judgment declaring that the Transfer is
fraudulent as to the Debts, pursuant to Section 3304(b)(1)(B)(ii) of the FDCPA, 28 U.S.C. §
3304(b)(1)(B)(ii), and to appropriate equitable and legal relief related thereto

THIRD CLAIM FOR RELIEF
(FPS - Fraudulent Conveyance)

51 Paragraphs 1 through 50 are realleged and incorporated by reference

52 The Debts are claims of the United States within the meaning of the FPS, as
defined in 31 U.S.C. § 3701(b)

53 ASARCO is insolvent within the meaning of the FPS in that its total liabilities
exceed its total assets and it is generally unable to pay its debts as they come due

54 The Defendants are collectively insolvent within the meaning of the FPS in that
their total collective liabilities exceed their total collective assets

55 The Transfer is an "act of bankruptcy" within the meaning of 31 U.S.C. §
3713(a)(1)(iii), in that it is a fraudulent conveyance

56 The United States is entitled to a judgment declaring that, pursuant to the FPS,
31 U.S.C. § 3713, the Defendants are prohibited from executing the Transfer without first
satisfying the Debts

FOURTH CLAIM FOR RELIEF
(Section 3304(a)(2) of the FDCPA - Insider Transfer)

57 Paragraphs 1 through 56 are realleged and incorporated by reference

58 AMC and Compañía Mexicana de Cobre are insiders within the meaning of the
FDCPA, 28 U S C § 3301(5)(D)

59 The Mexicana de Cobre Forgiveness is being made by ASARCO to AMC, in
part, for an antecedent debt owed by ASARCO to Compañía Mexicana de Cobre

60 The Mexicana de Cobre Forgiveness is being made at a time when ASARCO is
insolvent, and AMC and Compañía Mexicana de Cobre have reasonable cause to believe that
ASARCO is insolvent

61 The United States is entitled to a judgment declaring that the Mexicana de
Cobre Forgiveness is fraudulent pursuant to Section 3304(a)(2) of the FDCPA, 28 U S C §
3304(a)(2), and to appropriate equitable and legal relief related thereto

FIFTH CLAIM FOR RELIEF
(FPS - Insider Transfer)

62 Paragraphs 1 through 61 are realleged and incorporated by reference

63 The Mexicana de Cobre Forgiveness is an "act of bankruptcy" within the
meaning of 31 U S C § 3713(a)(1)(iii)

64 The United States is entitled to a judgment declaring that the Mexicana de Cobre
Forgiveness is prohibited by the FPS, 31 U S C § 3713, and to appropriate equitable relief
related thereto

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully requests from
this Court the following relief

a A judgment declaring that the Transfer is fraudulent as to the Debts pursuant
to Sections 3304(a)(1) and/or 3304(b)(1)(B)(ii) of the FDCPA, 28 U S C §§ 3304(a)(1) and/or
3304(b)(1)(B)(ii),

1 b A judgment declaring that the Mexicana de Cobre Forgiveness is fraudulent
2 as to the Debts pursuant to Section 3304(a)(2) of the FDCPA, 28 U S C § 3304(a)(2),


3 c A judgment declaring that the Transfer and the Mexicana de Cobre
4 Forgiveness are prohibited by the FPS, 31 U S C § 3713,

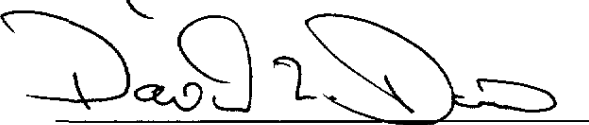
5 d Preliminary and permanent injunctive relief enjoining the Transfer and/or the
6 Mexicana de Cobre Forgiveness in the event that they have not occurred prior to the time of
7 entry of judgment, to the extent necessary to satisfy the Debts, and

8 e Such other relief as the Court deems appropriate

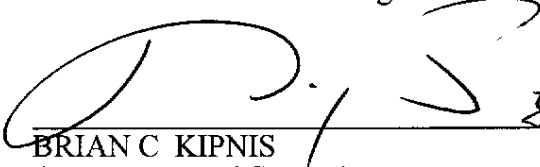
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10 Respectfully submitted,

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12 U S Department of Justice
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8/8/02